

DATE: January 3, 1990

TO: The Honorable Mayor and City Councilmembers

FROM: City Attorney

SUBJECT: Limits on Contributions to Independent

Committees/Election Workshop, January 12, 1990

During the 1989 election cycle questions arose regarding legal limits on contributions made to independent committees that make independent expenditures in support of or opposition to candidates for city office.

Specifically, the two questions arose: 1) Whether a contribution exceeding \$250 to an independent committee formed primarily for the purpose of supporting or opposing a candidate for city office violates San Diego Municipal Code section 27.2941(a); and, 2) Whether a contribution exceeding \$250 to an independent committee not primarily formed to support or oppose a specific candidate for city office, but whose purposes include such support or opposition, violates San Diego Municipal Code section 27.2941(a).

San Diego Municipal Code section 27.2941(a) reads as follows:

(a) No person other than a candidate, shall make, and no campaign treasurer shall solicit or accept, any contribution which will cause the total amount contributed by such person with respect to a single election in support of or in opposition to such candidate, including contributions to all committees supporting or opposing such candidates, to exceed two hundred and fifty dollars (\$250). (Emphasis added.)

During this past calendar year, this section was tested when an individual gave a \$3,600 dollar contribution to an independent committee formed primarily (according to the express terms on the form filed with the City Clerk's office) to oppose a then

incumbent city councilmember. The matter was referred to the District Attorney's office for review. The District Attorney opined that San Diego Municipal Code section 27.2941(a) was constitutionally valid and enforceable against both the individual who gave the contribution and the campaign treasurer who received the contribution, because the contribution exceeded the \$250 dollar limit set by the Code. This office concurs in that opinion. The opinion is currently being tested in the courts in the case of Navarro et al. v. Miller et al. (San Diego

Superior Court No. 617532). The City is being represented by District Attorney Edwin Miller. There is no final ruling to date.

The second question presented is whether a contribution exceeding \$250 to an independent committee not formed primarily to oppose a candidate would have to abide by the San Diego Municipal Code limits. We have no knowledge whether any such committee has actually received any contribution in excess of \$250. Therefore, the question is hypothetical. We believe, however, that for the same reasons cited by the District Attorney in his letter of October 16, 1989 (copy attached), the limits set in San Diego Municipal Code section 27.2941(a) would be found by a court of law to be constitutionally valid and would be enforceable against a committee which had many purposes, among which was to support or oppose a candidate. There is no language on the face of the San Diego Municipal Code which would exempt committees that have more than one purpose from the \$250 limit.

Therefore, we conclude that the \$250 limit applies not only to independent committees formed primarily to support or oppose candidates, but also to independent committees that have more than one purpose, only one of which includes that of supporting or opposing candidates.

JOHN W. WITT, City Attorney

By

Cristie C. McGuire

Deputy City Attorney

CCM:jrl:040(x043.2)

Attachment

ML-90-1